IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 24566 of 2007(Y)

PETITIONER:

MS.EXCEL TIMBERS PVT. LIMITED,
PETTA: FEROKE: CALICUT:
BY MANAGING DIRECTOR V.MAMMU.

BY ADV. SRI.JOSEPH VELLAPPALLY(SR.)
SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN

RESPONDENTS:

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1. THE INTELLINGENCE OFFICER (IB)
COMMERCIAL TAXES: KOLLAM.

2. STATE OF KERALA: REP . BY
COMMISSIONER OF COM. TAXES,
THIRUVANANTHAPURAM.

BY G.P. SRI. C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 24566 OF 2007

Dated this the 17th day of August, 2007

JUDGMENT

Petitioner is challenging Ext.P11 order by which first respondent has levied penalty of above Rs. 80 lakhs on the petitioner under Section 45A of the KGST Act for evasion of sales tax for the year 2003-04. Even though alternate remedy by way of revision is provided under the Statute at two stages, petitioner has chosen to file this Writ Petition challenging the penalty order on the ground that there is violation of natural justice and department has taken a conflicting stand in the petitioner's case and in the case of purchasers to whom petitioner made sales. The case of the department is that sales made by the petitioner which are apparently covered by Form 18 declarations issued by the purchasers are not genuine and are bogus in asmuchas the purchasers on investigation were found to be persons who do not have the capacity to carry on such volume of business. Senior counsel Sri. Joseph Vellappally appearing for the petitioner relied on copies of assessment orders issued in the name of purchasers to whom petitioner sold the

goods and contended that those assessments and impugned penalty orders issued against the petitioner cannot stand simultaneously as they are mutually conflicting. He also contended that checkpost records called for by the petitioner for verification of transport of goods were not produced in enquiry and so much so there is violation of natural justice. Government Pleader on the other hand contended that transactions are established to be bogus with clear evidence adduced by the department and therefore there is no scope for interference with the findings entered in the impugned order. His contention is that assessments made in the name of purchasers do not invalidate the subsequent penalty orders issued under Section 45A of the KGST Act.

2. On going through Ext.P11, I find it is one of several cases booked by the department after detailed enquiry conducted pursuant to direction issued in WPC 33646 of 2005. This Court in that case noticed that some of the dealers have manipulated documents and have even operated benami bank accounts and evaded tax and therefore detailed enquiry was ordered. It is after the very same enquiry that impugned penalty against the petitioner is also levied. Transactions

and dealers involved were in different districts and this Court therefore directed the Commissioner of Commercial Taxes to constitute a revisional authority to hear all cases together. Government Pleader submitted that some other dealers who were levied penalty have also filed revision petitions and this Court granted conditional stay orders and revisions are yet to be disposed of. In this case also I find the impugned penalty order runs into in 60 pages covering large number of transactions and facts and evidence pertaining to each of the same. It is not possible to appreciate the contentions of the petitioner without reference to records such as bills, details of payments, transport documents, etc. It is not for this Court in writ proceedings to examine the correctness of findings on fact in penalty proceedings for the first time, more so when the statute vests revisional jurisdiction against impugned penalty order with the Deputy Commissioner of Commercial Taxes. In view of the effective alternative remedy available to the petitioner, I am of the view that this Court should not entertain this Writ Petition challenging the penalty orders issued under Section 45A of the KGST Act more so when similar cases initiated simultaneously

based on similar facts are pending in revision before the statutory authority. In the circumstances, W.P. is closed leaving freedom to the petitioner to pursue statutory remedy of revision before the Deputy Commissioner of Commercial Taxes. If time for filing revision on account of filing of this Writ Petition is over, petitioner is granted ten days time to file revision petition against impugned penalty order. Therefore there will be direction to the revisional authority to entertain the revision petition, if filed along with a copy of this judgment within ten days from today.

Issue photocopy tomorrow itself.

(C.N.RAMACHANDRAN NAIR)
Judge